

105 KAR 1:250. Participation of county attorney employees.

RELATES TO: KRS 61.685, 78.5302

STATUTORY AUTHORITY: KRS 61.645

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) requires the board to promulgate administrative regulations necessary or proper to carry out the provisions of KRS 78.510 to 78.852. This administrative regulation sets out the procedures for determining membership in either the Kentucky Employees Retirement System or County Employees Retirement System for each employee of a county attorney who is paid from any source of funds outside the control of the fiscal court, urban-county government, or Prosecutors Advisory Council.

Section 1. Submission of Form by County Attorney. For each employee paid in whole or in part from any funds outside the control of the fiscal court, urban-county government, or Prosecutors Advisory Council, the county attorney shall complete and submit a Form 2110, Retirement System Determination – County Attorney Employees, to the retirement office. The county attorney shall submit the form on or before the date the first contributions are reported on each employee or prior to the employee assuming the new job function and duties, which causes the employee's participation in a retirement system to change between the County Employees Retirement System and Kentucky Employees Retirement System.

Section 2. Procedures for Determining Membership. The county attorney shall determine the system in which each employee shall participate based on the following:

(1) For an employee participating in the County Employees Retirement System or Kentucky Employees Retirement System, the county attorney shall continue to make the required contributions for creditable compensation paid to the employee, in whole or in part, from any funds outside the control of the fiscal court, urban-county government, or Prosecutors Advisory Council, to the system in which the employee is participating unless the employee experiences a modification in job function such that the employee's duties are more appropriately related to participation in a different system pursuant to KRS 78.5302(2).

(2) The employee shall participate in the Kentucky Employees Retirement System if a majority of the employee's job function is related to the prosecutorial duties of the county attorney's office. The employee shall participate in the County Employees Retirement System if a majority of the employee's job function is related to the civil legal representation of the fiscal court and other county officials.

(3) For those employees whose time is spent performing duties related to child support collection cases, whether criminal or civil, the employee shall participate in the retirement system that the county attorney has selected for child support enforcement employees consistent with the funding and operational methods of the county attorney's office.

(4) For purposes of this section, prosecutorial duties shall include duties and functions related to the prosecution of criminal cases in the district or circuit courts of the Commonwealth. Civil legal representation shall include duties and functions related to the representation of the fiscal court, its officers or employees, or other elected county officers in any civil or administrative proceeding in state or federal courts and administrative agencies.

Section 3. Audit of County Attorney's Determination. (1) Pursuant to KRS 61.685, Kentucky Retirement Systems may, at any time, conduct an audit of a county attorney's determination regarding employee participation in the Kentucky Employees Retirement System or the County Employees Retirement System to verify compliance with KRS 78.5302.

(2) Upon request, the county attorney shall provide Kentucky Retirement Systems with information regarding an employee's job duties, funding source for the employee's position, and respond to inquiries from the Systems to confirm the employee's correct system participation.

Section 4. Incorporation by Reference. (1) "Form 2110, Retirement System Determination – County Attorney Employees", March 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (19 Ky.R. 1016; Am. 1339; eff. 12-9-92; Crt eff. 11-19-2019; 46 Ky.R. 1925, 2395; eff. 6-2-2020.)